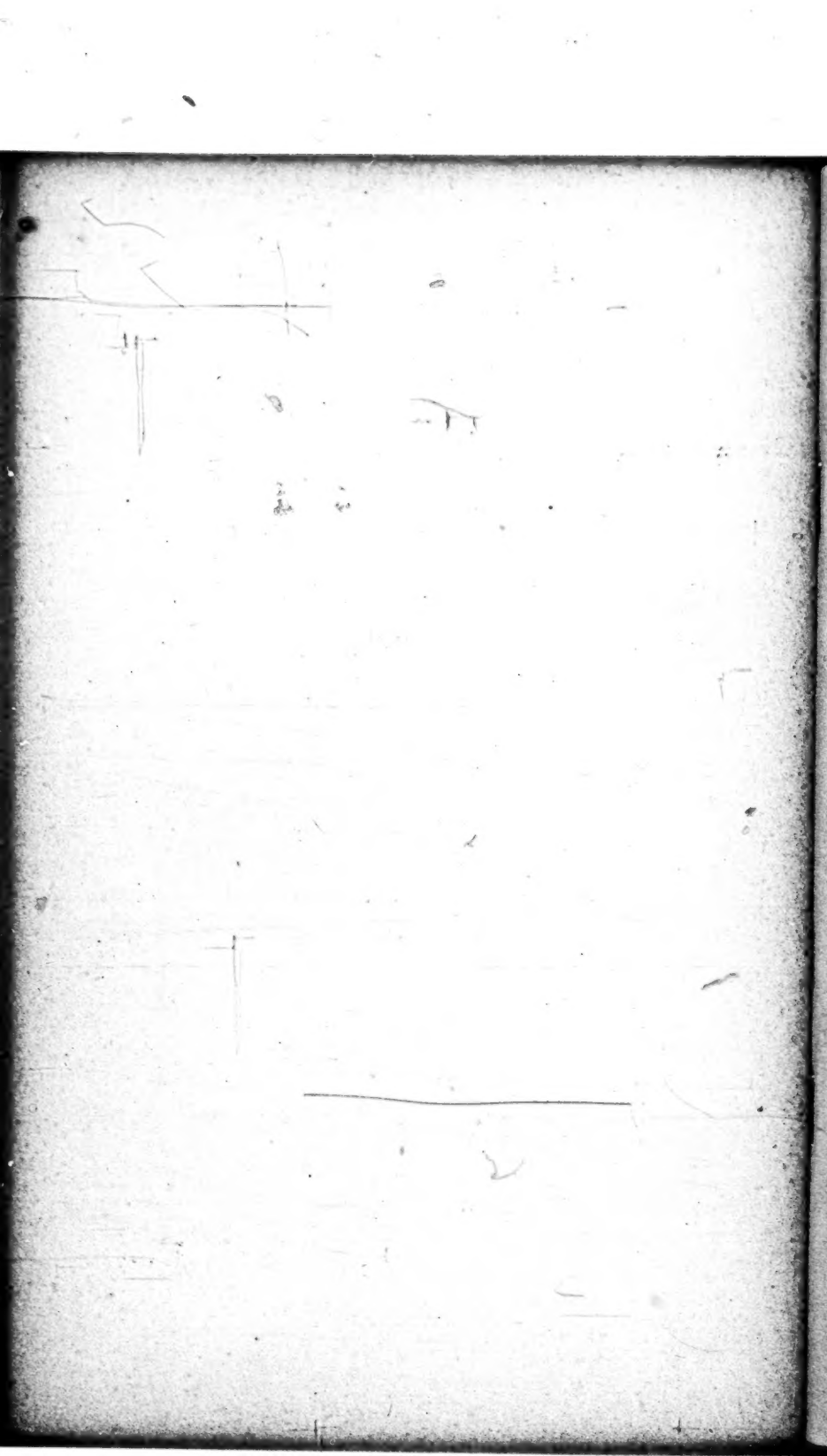

In the Supreme Co[illegible] the United States

OCTOB[illegible], 1973

No. [illegible]-822

ERNEST FRY AND THELMA BOEHM
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE TEMPORARY EMERGENCY COURT OF APPEALS

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE BY THE STATE OF MISSOURI

AND

AMICUS CURIAE BRIEF OF THE STATE OF MISSOURI, SPONSORED BY ITS ATTORNEY GENERAL, IN SUPPORT OF PETITIONERS

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The State of Missouri hereby respectfully moves for leave to file a brief amicus curiae in this case in support of petitioners as provided in U.S.Sup.Ct. Rule 42, 28 U.S.C.A.

1. This motion is presented within the time allowed for the filing of the brief of the party supported.

2. The consent of the parties has not been requested nor obtained. Consent of the parties is not necessary inasmuch as this brief is filed on behalf of the State of Missouri and sponsored by its Attorney General.

3. The State of Missouri in the exercise of its governmental powers, employs various people as state officials

or employees. The State of Missouri is defendant in an action instituted by the United States under the Economic Stabilization Act of 1970. United States v. State of Missouri, et al., No. 1888, In the United States District Court for the Western District of Missouri, Central Division. The issue here presented is similar to certain issues raised in the proceedings instituted by the United States against the State of Missouri. Petitioners will necessarily concentrate on the peculiar facts of their own case. In the brief tendered with this motion, the State of Missouri, as amicus curiae, considers the issue as it relates to the power of the Congress to regulate the compensation paid to state judges. The State of Missouri has a concrete interest, as amicus curiae, in a case which appears likely to define a vital aspect of the scope and power of the national government and the state.

WHEREFORE, the State of Missouri respectfully requests that this motion be granted.

JOHN C. DANFORTH
Attorney General of Missouri

GENE E. VOIGTS
Special Counsel for the Attorney General

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QUESTIONS PRESENTED

The issues in this case involve the relationship between the several states and the federal government. The questions presented are:

1. Whether the Economic Stabilization Act should be construed so as to be applicable to the states?

2. Whether Congress, acting under the commerce clause, may constitutionally define and control the emoluments of a state office which is inherent and indispensable to the state's existence and function as a sovereign entity?

INTEREST OF AMICUS CURIAE

Missouri's brief, as amicus curiae, is sponsored by its Attorney General pursuant to U.S.Sup.Ct. Rule 42, 28 U.S.C.A. This brief reflects Missouri's two-fold interest in the proceeding.

First, Missouri exercises its sovereign powers and discharges its duties to the people through its state officials and employees. In a real and substantial sense, the character of State government is directly determined by the quality of its officials and employees. Essential to the recruitment and retention of able state officials and employees is adequate compensation. Missouri has a vital stake in the result of this proceeding. The state's ability to determine its public officials and employees' compensation which is as vital to its operation as its ability to define their duties and control their performance, is at issue.

Missouri's second interest arises out of pending litigation under the Economic Stabilization Act of 1970, as amended, P.L. 92-210, 85 Stat. 743. The State of Missouri and its State Treasurer are defendants in an action brought by the United States of America for injunctive relief and restitution pursuant to the Economic Stabilization Act.

In 1972, the Seventy-Sixth General Assembly of Missouri enacted House Committee Substitute for Senate Bill No. 496 (Act 105). That Bill provided for certain increases in the compensation paid to Missouri Judges. The Bill, effective on August 13, 1972, was applicable to Judges of the Supreme Court of Missouri, the Missouri Courts of Appeal, the Circuit Court of Missouri, the St. Louis Court of Criminal Corrections, the Probate Courts of Missouri, and the Magistrate Courts of Missouri. The Bill was applicable to only the judiciary. Bills modifying the statutory rate of compensation were last enacted in 1967.

Compensation paid to Missouri judges is set by statute. In most instances, the compensation paid to the judges of a particular court is the same.[1] In some instances the compensation for judges of particular courts is determined by the classification of the county in which the court is situated.[2] The following table reflects the compensation changes made by the General Assembly:

Judge of the	Annual Rate Prior to August 13, 1972	Annual Rate After August 13, 1972
Supreme Court	$26,500.00	$31,500.00
Court of Appeals	25,000.00	30,000.00
Circuit Court	20,000.00–23,000.00	28,000.00
Court of Criminal Corrections	21,000.00	26,000.00
Probate Court	10,000.00–24,000.00	16,000.00–28,000.00
Magistrate Court	10,600.00–17,400.00	16,200.00–22,400.00

Missouri judges do not have life tenure. Some judges are selected under the nonpartisan court plan for a specific term at the conclusion of which the people vote as to whether he shall be retained in office. Other judges are selected through the primary and general election process.

On October 24, 1972, a notice of violation of the Economic Stabilization Act was served upon the State of Missouri. That notice was predicated upon the fact that Missouri, on August 13, 1972, began compensating its judges in accordance with the terms of Act 105. The notice of violation, under the regulations then in effect, deprived Missouri of any administrative remedies.

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1. Sec. 477.130 V.A.M.S. (1972); Section 478.013 V.A.M.S. (1972); Sec. 479.060 V.A.M.S. (1972).

2. Sec. 481.205 V.A.M.S. (1972); Sec. 482.150 V.A.M.S. (1972).

On November 14, 1972, the United States filed its complaint for injunctive relief and restitution against the State of Missouri and the State Treasurer. United States of America vs. State of Missouri, et al., Civil Action No. 1888, In the United States District Court for the Western District of Missouri, Central Division.

Further proceedings in that case need not be detailed to demonstrate Missouri's interest as amicus curiae in this case. It is sufficient to note that the United States, upon institution of Phase III of the Economic Stabilization program, abandoned its claim for injunctive relief. The United States' pending complaint is upon its claim for restitution, predicated upon amounts paid in excess of the guidelines, during the period commencing August 13, 1972, and ending on January 11, 1973.

The interest of the State of Missouri as amicus curiae is readily apparent. The decision of the United States Temporary Emergency Court of Appeals negates Missouri's right to determine and establish emoluments of public office or employment. Missouri seeks to preserve its right, as a State, to determine the nature of compensation to be paid to those state officials and employees who discharge the functions of the state.

ARGUMENT

I.

The Economic Stabilization Act, Because It Does Not Contain Explicit Direction That Is Applicable to the States, Should Not Be Construed As Applicable to the States

The Economic Stabilization Act of 1970, as amended, P.L. 91-379, 84 Stat. 799; P.L. 91-588, 84 Stat. 1468; P.L. 92-8, 85 Stat. 13; P.L. 92-15, 85 Stat. 38; P.L. 92-210, 85 Stat. 743, constitutes a significant intrusion upon the power of the state to determine the objects and purposes for which state revenue will be expended. Before considering the constitutional issue, it must be determined whether the Economic Stabilization Act is applicable to the state. The intention to include the states within the scope of the Economic Stabilization Act is not clearly expressed in the Act, and, in the absence of a clear expression of congressional intent, the Act should be construed so as to exclude the states with the exception of rents.

Section 203 of the Economic Stabilization Act of 1970, Public Law 91-379, provided, in part, that:

> "The President is authorized to issue such orders and regulations as he may deem appropriate to stabilize prices, rents, wages, and salaries."

The Act contains no further guidance as to the subjects to whom the President may exercise this authority. Guidance, however, is found in the sections providing for sanctions as to violators of the Act. Section 204 of Public Law 91-379, extends sanctions to "whoever" Section 205, authorizing the issuance of injunctions, provides, in part, that an injunction may issue as against ". . . any person (who) has

engaged, is engaged, or is about to engage in any acts or practices constituting a violation of any regulation or order under this title, . . ."

Subsequently, Congress enacted Public Law 92-210 which contained the following grant of presidential authority:

> "(a) The President is authorized to issue such orders and regulations as he deems appropriate, accompanied by a statement of reasons for such orders and regulations, to -
>
> > "(1) Stabilize prices, rents, wages, and salaries at levels not less than those prevailing on May 25, 1970, except that prices may be stabilized at levels below those prevailing on such date if it is necessary to eliminate windfall profits or if it is otherwise necessary to carry out the purposes of this Title; . . ."

Again, the Act did not purport to define those to whom it would extend. Guidance, however, is obtained by the language employed by Congress in providing for various sanctions and judicial remedies. In Section 208 of Public Law 92-210, Congress provided for criminal and civil penalties against "whoever" violated an order or regulation issued under the Act. Congress specifically provided for injunctive relief as against ". . . any individual or organization (which) has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of any order or regulation under this Title . . ." Public Law 92-210, consists of twenty sections and various paragraphs and subparagraphs contained therein. Yet, throughout the entirety of the Act, specific mention of a state is made on only one occasion. That mention occurs in Subsection (h) of Section 203 of Public Law 92-210, and provides:

> "No state or portion thereof shall be exempted from any application of this Title with respect to rents solely

by virtue of the fact that it regulates rents by state or local law, regulation or policy."

General words or language of a statute that tend to injuriously encroach upon the affairs of government receive a strict interpretation and in the absence of an expressed provision the sovereign remains unaffected. *United States* v. *United Mine Workers of America*, 330 U.S. 258 (1947); *Leiter Minerals* v. *United States*, 352 U.S. 220 (1957).

Congress may choose and employ such language as it desires, but when it departs from that which usually, clearly and unequivocally designates the "state," it becomes a matter for judicial determination of what was meant and intended by such different phraseology. Primary reliance must be placed upon the language employed by Congress.

> "There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes." *United States* v. *American Trucking Associations*, 310 U.S. 534, 543 (1940).

In this case, where the impact is between the asserted superiority of the federal statute and state statutory actions as to its own affairs, the court is confronted with:

> ". . . one of those problems in the reading of a statute wherein meaning is sought to be derived not from specific language but by fashioning a mosaic of significance out of the innuendoes of disjointed bits of a statute. At best this is subtle business, calling for great wariness lest what professes to mere rendering becomes creation and attempted interpretation of legislation becomes legislation itself. Especially is wariness enjoined when the problem of construction implicates one of the recurring phases of our federalism and in-

volves striking a balance between national and state authority in one of the most sensitive areas of government." *Palmer* v. *Massachusetts,* 308 U.S. 79, 83-84 (1939).

Proper construction of the Act is determined by application of the principle that,

> "An unexpressed purpose of Congress to set aside statutes of the states regulating their internal affairs is not lightly to be inferred, and ought not to be implied where the legislative command, read in the light of its history, remains ambiguous. Considerations which lead us not to favor repeal of statutes by implication . . . . should be at least as persuasive when the question is one of nullification of state power by congressional legislation." *Penn Dairies* v. *Milk Control Commission,* 318 U.S. 261, 275 (1943).

If the congressional purpose was to include the sovereign, it should be mentioned specifically by name. *United States* v. *Cooper Corporation,* 312 U.S. 600 (1941); *Davis* v. *Pringle,* 268 U.S. 315 (1925). The use of the phrase "any person" is insufficient to include the sovereign. *United States* v. *Cooper Corporation, supra.* There, Mr. Justice Roberts, delivering the opinion of the court, stated:

> "Without going beyond the words of the section, the use of the phrase 'any person' is insufficient to authorize an action by the Government. This conclusion is supported by the fact that if the purpose was to include the United States, 'the ordinary dignities of speech would have led' to its mention by name. . . . The more natural inference, we think, is that the meaning of the word was in both uses limited to what are usually known as natural and artificial persons, that is, individuals and corporations." 312 U.S. at 606.

In case of ambiguity, the construction should be that which strikes a balance between federal and state authority. *Palmer* v. *Massachusetts, supra; Penn Dairies* v. *Milk Control Commission, supra; Federal Trade Commission* v. *Bunte Brothers,* 312 U.S. 349 (1941). That balance is achieved in the instant case by holding that the act is not applicable to the states.

II.

Congress Exceeds Its Delegated Power to Regulate Commerce, When It Classifies the State, As an Entity and in Its Entirety, As a Person Subject to the Economic Stabilization Act, So That Congress May Define and Control the Emoluments of a State Office Which Is an Inherent and Indispensable Part of the State's Existence and Function As a Sovereign Entity

Congress made no specific finding or statement identifying which delegated power it exercised by the enactment of the Economic Stabilization Act. The court below upheld the Act based solely on the Commerce Clause. *United States* v. *State of Ohio,* 487 F.2d 936 (Em.App. 1973). Therefore, this argument is limited to whether Congress exceeded its powers under the Commerce Clause.

In the Temporary Emergency Court of Appeals, the United States contended the states are subject to the Economic Stabilization Act because ". . . states are engaged in interstate commerce." The states' purported participation in interstate commerce was predicated upon the ". . . acknowledged fact that states import, handle or sell goods which flow in interstate commerce." (Brief of the United States, p. 18).

Through state funds appropriated by its legislature, Missouri employs approximately 56,000 persons. This includes both state employees and state officials. Generally,

the specific salary for each state employee is not established by the legislature. Rather, a sum of money is appropriated to a particular agency for personal services. Compensation of individual employees is established within the limits of the appropriation. The rate of compensation for an individual employee may vary from year to year, or within a year.

The compensation of public officials, such as Missouri Judges, is set by statute. See, e.g., Sec. 477.130 V.A.M.S. (1972). That statutory rate of compensation may remain unchanged for several years. For example, with respect to judges of the Missouri Supreme Court, the legislature has enacted two bills increasing their compensation in the last twelve years. The statute does not contain a built-in formula which affects the rate of compensation. The compensation of Missouri judges is changed only by solemn act of the legislature and upon approval of the Governor.

Missouri must operate its government by a balanced budget. It may not deficit finance. Art. IV, Secs. 27, 28, Mo. Const. 1945. Each year the legislature and the executive must make critical and fundamental decisions as to the objects, purposes and programs for which state revenue will be expended. They must decide whether particular programs or offices require additional personnel, and what rate of compensation should be paid to the various state officials and employees. It is this decision making process into which the federal government has now intruded if the decision below is allowed to stand.

The invidious nature of this intrusion is demonstrated by the action filed against Missouri. Missouri, acting through its legislative and executive branch, established the rate of compensation for approximately 56,000 persons. The United States argues that Missouri's governmental decision, with respect to approximately 300 judges

out of 56,000 state officials and employees, violated the Economic Stabilization Act.

In pleadings filed in the Missouri case, the United States stated that:

> ". . . in the operation of the state government, for example, public educational and health facilities, . . . it engages in interstate commerce. On this basis, the Congress had the authority to control maximum wages and salaries of *all the employees* of defendant Missouri under the Commerce Clause." (Points and Authorities of Law in Support of Plaintiff's Motion for Injunctive Relief, p. 4.) (Emphasis added.)

Thus, it appears that the United States envisions no limitation upon its power. Apparently, the activities of a few state employees or isolated transactions which involve importing, handling or selling goods which flow in interstate commerce authorizes congressional control of the entire state budget or any component thereof.

The Missouri situation demonstrates the startling and unprecedented intrusion of the federal government into the State's legislative chambers and executive office. For the first time, it is not just a particular activity of the State which is subjected to Congressional regulation and control. For the first time, it is the State as an entity, in its entirety, which is subjected to congressional control and regulation. The Congressional control and regulation here asserted is not authorized by prior decisions of this court and the Constitution.

The decision of Temporary Emergency Court of Appeals, *United States* v. *State of Ohio*, 487 F.2d 936 (Em. App. 1973), is wrong. That Court in concluding that Congress may constitutionally impose economic controls over compensation paid to State employees did so in reliance

upon *Maryland* v. *Wirtz*, 392 U.S. 183 (1968); *Case* v. *Bowles*, 327 U.S. 92 (1946); *New York* v. *United States*, 326 U.S. 572 (1946); *United States* v. *California*, 297 U.S. 175 (1936).

Those decisions, when considered collectively, reflect two competing principles. First, certain activities, even though performed by a state, may be regulated by Congress under the commerce clause. This principle is reflected in decisions holding that a state operated railway is subject to the Federal Safety Appliance Act, *United States* v. *California, supra;* The Railway Labor Act, *California* v. *Taylor*, 353 U.S. 553 (1957); and the Federal Employers Liability Act, *Parden* v. *Terminal Railway of Alabama Docks Department*, 377 U.S. 184 (1964). It is also reflected in decisions holding that the state in its operation of schools and hospitals is subject to the Fair Labor Standards Act, *Maryland* v. *Wirtz, supra;* the state operation of a port facility is subject to regulation by the Maritime Commission, *California* v. *United States*, 320 U.S. 577 (1944); and that state schools are subject to customs dues for foreign goods purchased, *Board of Trustees of the University of Illinois* v. *United States*, 289 U.S. 48 (1933). The state's sale of timber is subject to price regulations. *Case* v. *Bowles, supra.* It should be added that these cases did not involve a state activity which was unique to the State government, as compared to maintenance of a state judiciary.

The second principle reflected in several of these decisions is that there are certain state activities which are so unique as to the states as to be protected from Congressional regulation.

A tax may be levied upon the sale of mineral water made by a state. *New York* v. *United States, supra.* The delegated power at issue was the power to tax. The state activity at issue, the sale of mineral water, was not unique to state government.

The Court's criticism of artificial standards for determining immunity from taxation, i.e., was the state was acting in a "governmental" or a "trading" capacity, did not negate existence of such immunity flowing from the state's sovereignty.

> "*Surely the power of Congress to lay taxes has impliedly no less a reach than the power of Congress to regulate commerce.* There are, of course, State activities and State-owned property that partake of uniqueness from the point of view of inter-governmental relations. These inherently constitute a class by themselves. Only a state can own a statehouse; only a state can get income by taxing. These could not be included for purposes of federal taxation in any abstract category of taxpayers without taxing the State as a State. But so long as Congress generally taps a source of revenue by whomsoever earned and not uniquely capable of being earned only by a state, the Constitution of the United States does not forbid it merely because its incidence falls also on a state." 326 U.S. at 582. (Emphasis added.)

That certain state functions are beyond the purview of Congressional power was emphasized in Chief Justice Stone's concurring opinion.

> "But we are not prepared to say that the national government may constitutionally lay a non-discriminatory tax on every class of property and activities of States and individuals alike." 326 U.S. at 586.

> "This is . . . because the tax can be regarded as discriminatory . . . and the tax, even though non-discriminatory, may be regarded as infringing its sovereignty." 326 U.S. at 587.

These decisions, while not dispositive of the issue here presented, do not reflect the two competing constitutional

principles that must here be resolved. These decisions are not here controlling because in each instance the impact was upon only a single activity of the state. In each instance it could not be fairly contended that the state activity was unique to it.

The issue here presented was anticipated but not decided in *Maryland* v. *Wirtz, supra,* which held the Fair Labor Standards Act applicable to schools and hospitals operated by the states or its political subdivision. Mr. Justice Harlan, author of the majority opinion, noted:

> "The dissent suggests that by use of an 'enterprise concept' such as that we have upheld here, Congress could under today's decision declare a whole state and 'enterprise' affecting commerce and take over its budgeting activities. This reflects, we think, a misreading of the Act, of Wickard v. Filburn, supra, and of our decision." 392 U.S. at 196, n. 27.

And in the event of such classification, he gave this assurance:

> "The court has ample power to prevent what the appellants purport to fear, 'the utter destruction of the State as a sovereign political entity.' " 392 U.S. at 196.

But, that eventuality, anticipated by Justices Douglas and Stewart, is now before the Court.

> "Could the Congress virtually draw up each State's budget to avoid 'disruptive effect[s] . . . on commercial intercourse.'?"

Congress, when acting pursuant to the commerce clause, exercises a delegated power which is limited by the Constitution. *Gibbons* v. *Ogden,* 22 U.S. 1 (1924). So also, Congress, when acting pursuant to its power to tax, exercises a delegated power which is limited by the Constitution. *Helvering* v. *Therrill,* 303 U.S. 218 (1938).

The power of Congress, whether exercised in the form of its power to tax or to regulate commerce, is limited by the same constitutional constraints. *New York* v. *United States, supra.* Thus, it is that:

> "The Constitution contemplates a national government free to use its delegated powers; also state governments capable of exercising their essential reserved powers; both operate within the same territorial limits; consequently the Constitution itself, either by word or necessary inference, makes adequate provision for preventing conflict between them." *Helvering* v. *Therrill,* 303 U.S. at p. 223.

The Constitution guarantees certain rights to the various states, including the right to a republican form of government, the right to territorial integrity, and most significant, the right of jurisdiction in all matters not given to the national government, reserved to the people, or forbidden to the states in the Constitution. The system of government established by the Constitution is federal in form resulting in the powers of government being divided between the national and state governments. By express provision and taken as a whole, the Constitution looks to an indestructible union. *Texas* v. *White,* 7 Wall. 700 (1869).

One of the State's reserved powers is not only the power but the duty to establish and maintain a state judiciary. In 1798, in *Calder* v. *Bull,* 3 Dall. 386, 387 (1798), the Court, speaking through Mr. Justice Chase, said,

> "It appears to me a self-evident proposition that the several state legislatures retain all powers of legislation delegated to them by the state constitutions, which are not expressly taken away by the constitution of the United States. The establishing courts of justice, the appointment of judges, the making of regulations for the administration of justice within each

state, according to its laws, on all subjects not entrusted to the federal government, appears to me to be the peculiar and exclusive province and duty of the state legislatures."

Again, in *Collector* v. *Day*, 78 U.S. 118, 126 (1871), the court, speaking of the "means and instrumentalities employed (by the states) for carrying on the operations of their governments, for preserving their existence, and fulfilling the high and responsible duties assigned to them in the constitution," said:

"And, more especially, those means and instrumentalities which are the creation of their sovereign and reserved rights, one of which is the establishment of the judicial department, and the appointment of officers to administer their laws. Without this power, and the exercise of it, we risk nothing in saying that no one of the states under the form of government guaranteed by the constitution could long preserve its existence. A despotic government might. We have said that one of the reserved powers was that to establish a judicial department, it would have been more accurate, and in accordance with the existing state of things at the time, to have said the power to maintain a judicial department. All of the 13 states were in the possession of this power, and had experienced it at the adoption of the constitution; and it is not pretended that any grant of it to the general government is found in that instrument. It is, therefore, one of the sovereign powers vested in the states by their constitutions, which remain unaltered and unimpaired, and in respect to which the state is as independent of the general government as that government is independent of the states."

So also, in *United States* v. *Railroad Company*, 84 U.S. 322 (1873), the court stated:

> "The right of the states to administer their own affairs through their legislative, executive, and judicial departments, in their own manner, through their own agencies, is conceded by the uniform decisions of this court and by the practice of the federal government from its organization." 84 U.S. at 327.

The state has the power to establish and maintain a state judiciary. *Missouri* v. *Lewis*, 101 U.S. 22 (1880). The state may create offices and define the incidents of office. *Wilson* v. *North Carolina*, 169 U.S. 586 (1898). The state may establish and modify the duties, terms and salary of any office. *Newton* v. *Commissioners*, 100 U.S. 548 (1880). And in so doing it is free from external influences. *Taylor* v. *Beckham*, 178 U.S. 548 (1900).

Thus, Missouri submits that the federal government exceeds its constitutional authority to regulate commerce when it purports to control the state in the exercise of one of the powers reserved to the states, determining the incidents of public office within the state.

One additional comment is necessary in light of the decision of the Temporary Emergency Court of Appeals. The court noted that the impact of the Economic Stabilization Act upon the state was less than that of the Fair Labor Standards Act, in that state expenditures were reduced rather than increased. This is precisely the vice. That decision, whether expenditures, in the form of compensation to state officials or employees should be increased, and, if so, in what amounts and to whom is uniquely a determination to be made by the state. Whether the state's best interest is served by increasing or decreasing state expenditures and determining the objects and purposes of

such expenditures can only be made by the state acting through its legislative and executive branch.

The power to establish and maintain a judicial branch is included within the powers reserved to the state. That power is impaired when the state may no longer define the nature of the duties and incidents of the judicial office.

Congress in the exercise of its power, found it was necessary,

> ". . . that in order to stabilize the economy, reduce inflation, minimize unemployment . . . it is necessary to stabilize prices, rents, wages, salaries, dividends, and interest, . . ."

Here, the United States contends that the participation of the state, or any of its officials or employees or departments in any form of interstate commerce is sufficient to subject the state, as an entity and in its entirety, to the provisions of the Economic Stabilization Act. If this be true, then what limitation if any, exists to prohibit Congress from defining "prices" so as to include taxes assessed by the states? If this be true, then what limitation, if any, exists to prohibit Congress, from prescribing the rate of interest to be paid on state obligations? If this be true, then what limitation, if any, exists to prohibit Congress, from regulating the number of persons to be employed by the state?

That limitation we submit is both expressed in the Tenth Amendment and the Constitution as a whole. The limitation is that Congress, in the exercise of a delegated power, may not regulate or impair the state in its exercise of a power which is unique unto the state, such as determining the emoluments of judicial offices.

CONCLUSION

Therefore, for the foregoing reasons, Missouri, as amicus curiae, respectfully submits that this Court should hold that the Act is not applicable to the states, or, if it is construed to be applicable to the states, that it is an unwarranted intrusion upon matters which are unique to the state. As such, the Act is in excess of Congress's powers under the Commerce Clause and in violation of the Tenth Amendment, and the Constitution as a whole.

Respectfully submitted,

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GENE E. VOIGTS
Special Counsel to the Attorney General